IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO.3 OF 2006

M/s.International Combustion(India) Ltd...Applicant.

V/s.

Shree Vallabh Foundary P.Ltd. ..Respondent.

Mr.Umacharan i/b Suresh N. Manoti for applicant.

Ms. Gauri Godse for Respondent.

CORAM: A.M.KHANWILKAR,J

DATE : JANUARY 25, 2006.

P.C. :

1. Heard counsel for the parties.

2. I see no reason to depart from the opinion expressed by the trial court that materials on record do not warrant the view that jurisdiction of Pune Court is ousted. I find substance in the submission canvassed on behalf of the respondent that in fact it is not open to the applicant to pursue the issue of jurisdiction having regard to the inconsistent plea taken in the written statement. In paragraph 4 of the Written statement, while adverting to the agreement dated 14th November, 1996, the case of appellant is that the exclusive jurisdiction will be that of the Court at Aurangabad; whereas in

paragraph-5 of the Written statement while referring to the purchase order it was asserted that jurisdiction will be that of court in City of Kolkatta. The respondents have rightly pressed into service decision of the Apex court in the case of **M/s. Hanil Era Textiles Ltd. V/s. M/s.Puromatic Filters (P) Ltd., reported in 2004 S.C.2432.** While considering similar provision made in the agreement as appear in the present case, clause 17 of the agreement dated 14th November, 1996, it was held by the Apex court that said clause by itself will not be sufficient to take the view that the jurisdiction of other court was ousted. No expression such as alone, only or exclusively has been used in clause 17 of the agreement. In so far as work order is concerned, that has been issued unilaterally by the appellant and clause 18 of that document cannot be the basis to hold that jurisdiction of Pune Court was ousted.

3. Taking over all view of the matter, I am in agreement with the conclusion reached by the court below that the Pune court has jurisdiction to try and decide the suit. Hence, dismissed.